

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

PETER ISSI,

Defendant and Appellant.

B244292

(Los Angeles County
Super. Ct. No. YA069626)

APPEAL from a judgment of the Superior Court of Los Angeles County, James R. Dabney, Judge. Affirmed.

Phillip I. Bronson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Lawrence M. Daniels and Esther P. Kim, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Peter Issi appeals from the judgment entered following the trial court's order finding him in violation of probation and imposing a suspended seven-year prison sentence. He contends the order is not supported by the evidence produced at the probation violation hearing. We affirm.

FACTUAL AND PROCEDURAL HISTORY

Defendant was originally charged with eight counts of theft, relating to his acts of transferring and possessing access cards, with the intent to defraud, without the cardholders' and issuers' consent. (Pen. Code, § 484e, subds. (a) & (d).) On December 12, 2008, defendant pled no contest to seven counts. He was sentenced to seven years in state prison. The court suspended execution of the sentence and placed defendant on five years of formal probation.

On March 5, 2012, defendant's probation was summarily revoked. According to the minute order, defendant had another open matter. A date was set for a probation violation hearing. The hearing was eventually held on August 24, 2012.

I. The Prosecution Evidence

On January 7, 2012, Anthony Hegg was working as a loss prevention supervisor for Bloomingdale's in Santa Monica. At about 6:30 p.m., he was in the camera room, a control center that allowed him to view the store, including the entrances, via cameras that were placed throughout. Hegg recorded the events of January 7 and the video was shown during the hearing. Hegg noticed defendant and a second man entering the store together. Because one of them resembled the person security personnel had been warned about in a flyer, Hegg paid close attention to the men. The man with defendant, later identified as Jeffrey Jimenez, went to the register in the men's department to make a purchase.

At the counter, Jimenez attempted to purchase some gift cards. He handed a credit card and a driver's license to the manager. The manager, who had been advised by Hegg

to bring those items to Hegg's office, left the floor with the credit card and driver's license. Shortly after the manager left, defendant approached Jimenez and they appeared to have a conversation. In the office, Hegg examined the driver's license, purportedly issued by the State of New York. He determined the license was a fake, as he had previously lived in New York and noticed that the license Jimenez produced was darker and less glossy than an authentic one. Hegg told the manager to allow Jimenez's transaction to go through, after which Hegg would arrest Jimenez.

Hegg sent a loss prevention representative, Daniel Snyder, to the sales floor to observe the transaction. Hegg continued to watch through the store's cameras. At first, Jimenez began to follow the manager toward Hegg's office. He then stopped and doubled back toward the men's department. Hegg left his office and walked to the sales floor. He observed Jimenez talking on a cell phone. He also saw defendant walking with a cell phone held to his ear. Defendant left the store and Hegg called Santa Monica police while he followed defendant. Shortly thereafter, the police arrived and contacted defendant. Jimenez also left the store; however, he was not immediately apprehended.

Hegg had seen approximately 500 thefts during his time working in loss prevention. Over half of the thefts involved two-person operations. He was certain defendant and Jimenez were working together. He based his opinion, in part, on what Daniel Snyder told him.

Daniel Snyder works in loss prevention for Bloomingdale's. On January 7, he was sent by Hegg to the sales floor to observe defendant and Jimenez. Jimenez presented his identification and credit card to the salesperson, in an attempt to purchase \$8,000 worth of gift cards. Snyder saw defendant nearby staring "intently" at the transaction.

The manager took the identification and credit card and started walking toward the office where Hegg was waiting. Defendant followed the manager and appeared to ask him a question. After the manager went through the office door, defendant paced near the door and looked toward it. He brought a cell phone to his ear and continued to pace. Snyder could not tell if defendant was speaking on the phone.

Jimenez approached defendant and asked, “What should I do?” Defendant responded, “Don’t follow me.” After repeating the command, defendant tried to walk away. Jimenez started to move away, then turned around and went back toward defendant. Jimenez asked defendant, “What should we do?” Defendant said, “You need to leave.” Jimenez asked, “The store?” Defendant replied, “Yes.” Jimenez made his way toward the store exit.

Defendant stayed in the store for a couple of minutes and then left. Snyder, who was speaking to Hegg on a cell phone, was directed to follow defendant while Hegg contacted the police. Snyder went outside the store and saw defendant standing nearby with the phone to his ear. Defendant remained there until the police arrived.

The credit card Jimenez attempted to use at Bloomingdale’s belonged to Alfonso Sosa. Sosa did not know the card had been stolen. He did not know defendant or Jeffrey Jimenez and did not give either of them permission to use his credit card.

II. The Defense Case

On January 7, 2012, at approximately 6:30 p.m., Jeffrey Jimenez entered the Bloomingdale’s store to purchase some gift cards. He did not have contact with defendant prior to entering the store; nor did he have any communication with defendant in the store with respect to the purchase of gift cards. Jimenez acknowledged that he saw defendant in Bloomingdale’s that day. He recognized defendant from having seen him on the bus on prior occasions. Jimenez spoke to defendant in the store only once, when he asked defendant where the store exit was. Jimenez spoke only English to defendant. As a result of his attempt to purchase gift cards with the stolen credit card, Jimenez pled guilty to second degree burglary.¹

¹ Jimenez also suffered a conviction for rape in 2000 and another for burglary in 2009.

III. The Prosecution Rebuttal

Santa Monica Police Detective Dean Hodges interviewed defendant after he was arrested. He said Jimenez approached him in the store. Defendant claimed he did not know Jimenez prior to that day. Jimenez asked him, in Spanish, about a taxi.

IV. The Trial Court's Finding

Based on the testimony of Hegg and Snyder and the video, the court concluded that defendant and Jimenez acted together in the attempt to purchase gift cards with the stolen credit card. The court took note of the fact that the men walked into the store together, virtually followed one another into the men's department, tried unsuccessfully to appear unattached and conversed with one another in a manner that demonstrated they were accomplices.

DISCUSSION

Defendant's sole contention is that there is insufficient evidence to support the trial court's order finding him in violation of his probation. He urges the lack of evidence demonstrating that he was an aider and abettor in Jimenez's scheme to defraud Bloomingdale's violates his right to due process.

“‘When a trial court's factual determination is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court *begins and ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination’ [Citation.]” (*People v. Superior Court (Jones)* (1998) 18 Cal.4th 667, 681.) “The standard of proof required for revocation of probation is a preponderance of evidence to support the violation. [Citation.] Trial courts are granted great discretion in deciding whether or not to revoke probation. [Citation.] ‘Absent abuse of that discretion, an appellate court will not disturb the trial court's findings.’ [Citation.]” (*People v. Kelly* (2007) 154 Cal.App.4th 961, 965.)

The following is the evidence that supports the trial court's order: (1) defendant and Jimenez entered Bloomingdale's together; (2) they tried to hide the fact they knew each other; (3) as Jimenez attempted to pass the stolen credit card, defendant intently observed the transaction at the cash register from a short distance; (4) when the manager took the fake driver's license and stolen credit card Jimenez presented and proceeded toward the office, defendant, who should have had no interest in what the manager was doing, approached him and asked a question; (5) after the manager entered the office, defendant paced nervously outside the office door; (6) Jimenez walked up to defendant and asked, "What should I do?"; (7) trying to distance himself from Jimenez, defendant twice told him, "Don't follow me"; (8) when Jimenez persisted by asking, "What should *we* do?," defendant told him, "You need to leave"; (9) defendant directed Jimenez to leave the store; and (10) defendant and Jimenez gave inconsistent accounts of their contact in the store. Although Jimenez testified that he and defendant bumped into each other by happenstance, the trial court found Jimenez "completely incredible." We have little difficulty concluding the trial court's order revoking probation was proper.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.